

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MAGGIE MALEKIFAR
Plaintiff,

v.

**OCCIDENTAL FIRE & CASUALTY
COMPANY OF NORTH CAROLINA**
Defendant.

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CIVIL ACTION NO. _____
JURY DEMANDED

**DEFENDANT OCCIDENTAL FIRE & CASUALTY COMPANY OF
NORTH CAROLINA’S NOTICE OF REMOVAL**

TO THE HONORABLE COURT:

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant Occidental Fire & Casualty Company of North Carolina (“Occidental”) files this Notice of Removal from that court to the United States District Court for the Southern District of Texas, Houston Division, on the basis of diversity of citizenship and respectfully shows:

I. FACTUAL BACKGROUND

1.1 On or about October 11, 2019, Plaintiff filed their Original Petition in the matter styled *Maggie Malekifar v. Occidental Fire & Casualty of North Carolina*, in the 125th District Court of Harris County, Texas, in which Plaintiff made a claim for damages to her home under a homeowner’s insurance policy.

1.2 Plaintiff served Occidental with process and Plaintiff’s Original Petition on October 18, 2019.

1.3 Plaintiff’s Original Petition states that “On or about August 25, 2017, plaintiff’s property sustained windstorm damage.” Pl.’s Original Pet. at §11.

1.4 Plaintiff alleges that Occidental improperly adjusted and underpaid her claim. *Id.* at §17. Plaintiffs' Petition seeks damages for breach of contract, breach of the duty of good faith and fair dealing, violations of the Texas Insurance Code, and violations of the Deceptive Trade Practices Act. *Id.* at §24-52.

1.5 The Index of Matters Being Filed is attached as Exhibit A to this Notice of Removal. A certified copy of the Harris County District Clerk's file for this case is also attached as Exhibit B and includes true and correct copies of all executed process, pleadings, and orders. The Designation of Counsel is attached as Exhibit C.

II. BASIS FOR REMOVAL

2.1 Removal is proper based upon diversity of citizenship under 28 U.S.C. §§ 1332, 1441(a) and 1446.

A. Complete diversity exists between Plaintiff and Occidental.

2.2 At the time the lawsuit was filed, Plaintiff was a resident of the State of Texas. *See* Pl.'s Original Pet. at §3.

2.3 Defendant Occidental Fire & Casualty Company of North Carolina is incorporated as a North Carolina-domiciled insurance company and has its principal place of business in North Carolina. Accordingly, Occidental is not a citizen of Texas.

2.4 Because Plaintiff is a citizen of Texas and Occidental, a foreign defendant, is the only defendant in this action, there is complete diversity between the parties. As such, removal is proper based upon diversity of citizenship under 28 U.S.C. §§ 1332(a)(1), 1441(a), and 1446.

B. The amount of damages prayed for by Plaintiff exceeds the amount in controversy required to confer diversity jurisdiction on this Court.

2.5 Federal courts have subject matter jurisdiction over actions between citizens of different states in which the amount in controversy exceeds \$75,000. 28 U.S.C. §1332(a)(1); *Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 882 (5th Cir. 2000). Generally, an amount in controversy for the purposes of establishing federal jurisdiction is determined by the Plaintiffs' complaint. *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1411-12 (5th Cir. 1995).

2.6 In her Petition, Plaintiff seeks monetary relief of over \$200,000. *See* Pl.'s Original Pet. at §2. The face of Plaintiff's Petition establishes that the amount in controversy exceeds this Court's requirements.

III. THE REMOVAL IS PROCEDURALLY CORRECT

3.1 Defendant Occidental was first served with Plaintiff's Original Petition and process on October 18, 2019. By filing its Notice on this day, November 15, 2019, Defendant Occidental files its Notice of Removal within the thirty-day time period required by 28 U.S.C. §1446(b).

3.2 Venue is proper in this District and Division under 28 U.S.C. §1446(a) because this District and Division include the county in which the state action has been pending and because a substantial part of the events giving rise to Plaintiff's claims allegedly occurred in this District and Division.

3.3 Pursuant to 28 U.S.C. §1446(d), promptly after Occidental files this Notice, written notice of the filing will be given to Plaintiff, the adverse party.

3.4 Pursuant to 28 U.S.C. §1446(d), a true and correct copy of this Notice of Removal will be filed with the Clerk of the Harris District Court, promptly after Occidental files this Notice.

IV. CONCLUSION

4.1 Based on the foregoing, the exhibits submitted in support of this Notice, and other documents filed contemporaneously with this Notice and fully incorporated herein, Defendant Occidental Fire & Casualty Company of North Carolina hereby removes this case to this Court for trial and determination.

Respectfully submitted,

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**ATTORNEY FOR OCCIDENTAL
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CERTIFICATE OF SERVICE

I, Mikell A. West, certify that on November 15, 2019, a copy of Defendant Occidental Fire & Casualty Company of North Carolina's Notice of Removal was *electronically filed* on the CM/ECF system, and will be served on the following attorneys in charge for Plaintiff Maggie Malekifar:

VIA CM/RRR: 7017 3040 0000 6511 3293

Danny Ray Scott
SCOTT LAW OFFICES, P.C.
P.O. Box 53358
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/s/ Mikell A. West

Mikell A. West